REMARKS

Status of the Claims

The Office Action mailed February 26, 2010 noted that claims 1-21 and 23-33 were pending, allowed claim 26 and rejected claims 1-21, 23-25 and 27-33. Claims 1, 5, 12, 15, 16, 19, and 30-33 are amended. No claims are cancelled. New claim 34 is added. No new matter is believed to be presented.

It is respectfully submitted that claims 1-21, 23, and 25-34 are pending and under consideration.

The Applicants thank the Examiner for Personal Interview of May 17, 2010 and incorporate the substance of the Interview herein.

Objection to the Drawings

The Office Action, on page 4, objected to the drawings under 37 CFR 1.83(a) because the features recited in claim 32 are allegedly not shown in the drawings. Applicants previously submitted a replacement drawing for Figure 3 on October 26, 2009 to overcome this objection. As discussed during the Interview, paragraph [0069] of the Specification is amended to reference replacement Figure 3 as suggested by the Examiner.

Withdrawal of the objection is respectfully requested.

Rejection under 35 U.S.C. § 112, first paragraph

The Office Action, on page 5, rejected claims 1-21, 23-25 and 27-33 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

According to MPEP 2163:

> The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:
>
> (A) Identify the claim limitation at issue; and
>
> (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the

> invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability in the art" is not a sufficient reason to support a rejection for lack of adequate written description.
>
> When appropriate, suggest amendments to the claims which can be supported by the application's written description, being mindful of the prohibition against the addition of new matter in the claims or description. See *Rasmussen*, 650 F.2d at 1214, 211 USPQ at 326.

It is respectfully submitted that one of ordinary skill in the art at the time would have recognized that the inventors were in possession of the invention. The Examiner has merely cited to paragraph [0032] which discusses a particular embodiment including a control which allows the user to hide, suppress or minimize the interface. This is not a sufficient reason to support a lack of adequate written description. The Examiner seems to be arguing that the claim features may contradict a particular embodiment discussed in the Specification, which is not a failure to comply with the written description requirement.

However, as discussed during the Interview, claim 1, for example, is amended to clarify that all the controls arranged along the arc shaped persistent graphic are visible and accessible at all times as suggested by the Examiner. In particular, claim 1 is amended to recite "controls initiating an action, located in the interface area, **all the controls arranged along the arc shaped persistent graphic visible and accessible at all times**, and accessible via the natural motion."

Claim 5 is amended to clarify "controls located in the interface area and accessible via the natural motion, all the controls arranged along the arc shaped graphic visible and accessible at all times."

Claim 12 is amended to clarify "having graphics for controls arranged along the interface arc visible and accessible at all times."

Claim 15 is amended to clarify "controls arranged along the persistent arc shaped graphic visible and accessible at all times and located essentially in an arc."

Claim 19 is amended to clarify "controls arranged along the arc shaped persistent graphic visible and accessible at all times and located essentially in an arc."

Claims 20, 21, 27 and 28 have not been amended. Claim 20 recites "mapping visible and accessible at all times controls of a persistent graphical user interface." Therefore, claim 20 clearly recites that controls are visible and accessible at all times on a persistent graphical user interface. Claims 21 also recites "mapping visible and accessible at all times controls of a

graphical user interface in an arc shape." Claim 27 recites "mapping visible and accessible at all times controls of a persistent graphical user interface in an arc shape." Claim 28 recites "positioning a persistent graphical user interface of multiple controls visible and accessible at all times in a lower left corner of the display for a right-handed user and a lower right corner of the display for a left-handed user."

Claim 31 is amended to clarify "controls arranged along the interface graphic visible and accessible at all times, and accessible via the natural motion."

Claim 32 is amended to clarify controls "arranged along the arc shaped persistent graphic initiating an action, located in the interface area and visible and accessible at all times and accessible via the first and second natural motion."

Claim 33 is amended to clarify "controls arranged along the arc shaped persistent graphic initiating an action, located in the interface area and visible and accessible at all times and accessible via the natural motion."

Withdrawal of the rejection is respectfully requested.

If any issues remain, the Examiner is requested to telephone the undersigned.

Rejection under 35 U.S.C. § 103(a)

The Office Action, on page 6, rejected claims 1-9, 11-14, 20-21, 23-24, 28-29, 31 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Durrani and Iwema. The Office Action, on page 12, rejected claims 25 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Durrani, Iwema and Keely Jr. The Office Action, on page 14, rejected claim 10 as being unpatentable over Durrani, Iwema and Kurtenbach. The Office Action, on page 15, rejected claims 15-18 under 35 U.S.C. § 103(a) as being unpatentable over Durrani, Iwema and Anderson. The Office Action, on page 17, rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Durrani, Iwema, Anderson and Kurtenbach. The Office Action, on page 19, rejected claim 32 under 35 U.S.C. § 103(a) as being unpatentable over Durrani, Iwema and Sowden.

It is respectfully submitted that claim 1 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "controls initiating an action, located in the interface area, all the controls arranged along the arc shaped persistent graphic visible and accessible at all times, and accessible via the natural motion." The Office Action, on page 7, asserted that Durrani describes the above features and cited to Figure 3 of Durrani. In particular, the Office Action asserted that controls 320 teach these features.

However, as discussed during the Interview, Durrani only discusses a graphical text entry wheel and that the wheel has a plurality of characters 320 which are shuffled through by using a small button, joystick or other pointing device. Figure 3 of Durrani only shows a small part of the alphabet which is visible and accessible at a time. Thus, Durrani and Iwema do not discuss "all the controls arranged along the arc shaped persistent graphic visible and accessible at all times."

By locating the text entry wheel in the corner as seen in Figure 3 of Durrani, the text entry wheel cannot display all of the alphabet at any one time and must rotate to display other letters. Claim 1 recites "all the controls arranged along the arc shaped persistent graphic visible and accessible at all times." Therefore, Figure 3 of Durrani does not show these features. Nothing cited or found in Iwema cures the deficiencies of Durrani.

Therefore, it is respectfully submitted that claim 1 patentably distinguishes over Durrani and Iwema.

Claim 5 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "controls located in the interface area and accessible via the natural motion, all the controls arranged along the arc shaped graphic visible and accessible at all times."

Claim 12 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "a persistent interface having an interface arc shape, located in a lower left corner of a display area for a right-handed user and in a lower right corner of the display area for a left-handed user, having graphics for controls arranged along the interface arc visible and accessible at all times."

Claim 15 patentably distinguishes over Durrani, Iwema and Anderson, taken alone and in combination, because nothing cited or found discusses "controls arranged along the persistent arc shaped graphic visible and accessible at all times and located essentially in an arc in the graphic where the arc is substantially perpendicular to a natural motion path of the natural motion."

Claim 19 patentably distinguishes over Durrani, Iwema, Anderson and Kurtenbach, taken alone and in combination, because nothing cited or found discusses "controls arranged along the arc shaped persistent graphic visible and accessible at all times and located essentially in an arc in the graphic where the arc is substantially perpendicular to a natural motion path of the natural motion." Claim 19 also recites "a control closest to a display area is **positioned along**

the curve at least a radius of a menu of the control from a display edge." The Office Action, on page 18, admitted that Durrani, Iwema, Andersen and Kurtenbach do not teach this feature, but that it would have been obvious and cited to In re Japiske. However, this rejection is traversed because this positioning along the curve at least a radius of the menu of the control from the display edge solves a problem as specifically noted in the Specification, for example, in paragraph [0021]. Therefore, claim 19 patentably distinguishes over Durrani, Iwema, Anderson and Kurtenbach.

Claim 20 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "mapping visible and accessible at all times controls of a persistent graphical user interface in an arc shape at a lower left corner location for a right-handed user and at a lower right corner location for a left-handed user and responsive to an approach arc associated with an end of a range of a natural user motion."

Claim 21 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "mapping visible and accessible at all times controls of a graphical user interface in an arc shape at a lower left display corner location for a right-handed user and at a lower right display corner location for a left-handed user and responsive to an approach arc associated with an end of a range of a natural user motion."

Claim 27 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "mapping visible and accessible at all times controls of a persistent graphical user interface in an arc shape at a lower left corner location for a right-handed user and at a lower right corner location for a right-handed user and responsive to an approach arc associated with an end of a range of a natural user motion."

Claim 28 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "positioning a persistent graphical user interface of multiple controls visible and accessible at all times in a lower left corner of the display for a right-handed user and a lower right corner of the display for a left-handed user and associated with an end of a range of a natural user motion."

Claim 31 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "controls arranged along the interface graphic visible and accessible at all times, located in the interface graphic and accessible via the natural motion."

Claim 32 patentably distinguishes over Durrani and Iwema, taken alone and in

combination, because nothing cited or found discusses "controls arranged along the arc shaped persistent graphic initiating an action, located in the interface area and visible and accessible at all times and accessible via the first and second natural motion."

Claim 33 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "controls arranged along the arc shaped persistent graphic initiating an action, located in the interface area and visible and accessible at all times and accessible via the natural motion."

The dependent claims depend from the above-discussed independent claims and are patentable over the cited references for the reasons discussed above. The dependent claims also recite additional features not taught or suggested by the cited references. For example, claim 7 recites "a radius of the arc shaped curve is at least a radius of a menu of one of the controls." As previously asserted by the Applicants, Figure 3 of Durrani does not have a menu associated with any of the letters 320 and Figure 3 of Durrani clearly does not show "a radius of the arc shaped curve is at least a menu of one of the controls." It is respectfully submitted that it is unreasonable to assert that one of the letters 320 of Durrani is also a menu of one of the controls. Such an interpretation is merely improper hindsight and an overly broad and unreasonable interpretation. None of the letters in Durrani have an associated menu of selections. Durrani only notes that it will place likely selected characters within the text wheel. Durrani does not say that any letter has its own associated menu. Furthermore, unfortunately, Applicants cannot reasonably determine how Durrani teaches this feature because no reasoning is provided explaining why Figure 3 of Durrani is believed to discuss the claimed features and as in previous Office Actions are at a disadvantage for responding to the Office Action.

Furthermore, Figure 3 of Durrani does not show or teach "a **radius** of the arc shaped curve is at least a **radius** of a menu of one of the controls." See MPEP 2125: "When the reference does not disclose that the drawings are to scale and is silent as to dimensions, **arguments based on measurement of the drawing features are of little value**. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000)." Durrani fails to note that Figure 3 is to scale and any arguments based on Figure 3 of Durrani are without support. It is submitted that the dependent claims are independently patentable over the cited references.

New Claim 34

Claim 34 patentably distinguishes over Durrani and Iwema, taken alone and in combination, because nothing cited or found discusses "the controls arranged along the arc shaped persistent graphic have an overlap interference angle of less than forty-five degrees." As discussed during the Interview, Durrani and Iwema do not teach these features. The characters 320 discussed in Durrani do not have an overlap interference angle of less than forty-five degrees and thus claim 34 patentably distinguishes over Durrani and Iwema. Furthermore, Durrani does not suggest this feature because Durrani notes that the graphical text entry wheel cycles through characters by a user using a button or joystick or pointing device which allows a user to simply scroll through the characters. Thus, an overlap interference angle between the controls is irrelevant to the text wheel in the combination of Durrani and Iwema.

Allowable Subject Matter

The Office Action, on page 20, noted that claim 26 is allowable.

Summary

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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